INDEX

SUBJECT INDEX

Page

TABLE OF CASES CITED

Brief of appellant in opposition to motion to dismiss . . . 1

Albrecht v. *U. S.*, 273 U. S. 1, 47 Sup. Ct. 250 . . . 4
Baldwin v. *Hale*, 1 Wall. 223 . . . 4
Coe v. *Armour Fertilizer Works*, 237 U. S. 413 . . . 3, 4
Galpin v. *Page*, 18 Wall. 350 . . . 4
Louis K. Liggett Co. v. *Baldridge*, 278 U. S. 105, 49 Sup. Ct. 57 . . . 4
Louisville & N. R. Co. v. *Schmidt*, 177 U. S. 230, 20 Sup. Ct. 620, 44 L. Ed. 747 . . . 2
Pennoyer v. *Neff*, 95 U. S. 714, 24 L. Ed. 565 . . . 3
Postal Tel.-Cable Co. v. *Newport*, 247 U. S. 464, 38 Sup. Ct. 566, 62 L. Ed. 1215 . . . 2
Powell v. *Alabama*, 287 U. S. 45 . . . 4
Scott v. *McNeal*, 154 U. S. 34, 14 Sup. Ct. 1108, 38 L. Ed. 896 . . . 2
Simon v. *Craft*, 182 U. S. 427, 21 Sup. Ct. 836, 45 L. Ed. 1165 . . . 2
Snyder v. *Massachusetts*, 291 U. S. 97 . . . 4
Twining v. *New Jersey*, 211 U. S. 78 . . . 4
Washington ex rel. Oregon R. and Nav. Co. v. *Fairchild*, 224 U. S. 510 . . . 4
Windsor v. *McVeigh*, 93 U. S. 274, 23 L. Ed. 914 . . . 2

STATUTES CITED

Constitution of the United States:
Fifth Amendment . . . 2
Sixth Amendment . . . 2
Fourteenth Amendment . . . 2

BLEED THROUGH- POOR COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 201

GRACE McNAMARA, ET AL.,

Appellant,

vs.

THE SALVATION ARMY, INCORPORATED,
A CORPORATION

BRIEF OF APPELLANT IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS

I

Appellee, in Point I in its motion to dismiss, contends that this appellant has omitted from her jurisdictional statement the specification required in Rule 12 of the Rules of this Honorable Supreme Court as to the "stage" of proceedings in the court of first instance, at which, and the manner in which, the Federal questions sought to be reviewed were raised.

Appellee omits entirely from consideration the legal fact that THIS APPELLANT HAS APPEALED TO THIS HONORABLE SUPREME COURT BECAUSE SHE WAS DENIED ANY TRIAL WHATEVER IN THE COURT OF FIRST INSTANCE. It is apparent that no Federal

question could be raised in the court of first instance since there were no proceedings therein as concerns this appellant by way of a trial therein.

That the opportunity to be heard is an essential requisite of due process of law in judicial proceedings is a matter of uniform and long established holding by this Honorable Supreme Court. *Postal Tel.-Cable Co.* v. *Newport,* 247 U. S. 464, 38 S. Ct. 566, 62 L. Ed. 1215; *Windsor* v. *McVoigh,* 93 U. S. 274, 277, 23 L. Ed. 914, 915; *Louisville & N. R. Co.* v. *Schmidt,* 177 U. S. 230, 236, 20 S. Ct. 620, 44 L. Ed. 747, 750; *Simon* v. *Craft,* 182 U. S. 427, 436, 21 S. Ct. 836, 45 L. Ed. 1165, 1170.

II

In Point II of its motion to dismiss, appellee declares that the record presented by the appellant does not show that a Federal question was raised and decided adversely, nor that a Federal question was presented in, and expressly or necessarily decided by the Supreme Court of Kansas.

Appellee thereby seeks to avoid and deviate from the record in this case and the certificate of the Honorable W. W. Harvey, Presiding Justice of the Supreme Court of the State of Kansas, who certified that in the appeal presented by this appellant to said Supreme Court of Kansas, "a question whether the actions, rulings and/or refusals of the Judge of the trial court to act or rule upon the applications of the petitioner herein, as defendant therein, constituted a denial of due process of law guaranteed under the provisions of Articles 5 and 6 and the 14th Amendment to the Constitution of the United States, WAS ARGUED IN THE BRIEF OF APPELLANT . . . AND WAS NOT CONSIDERED OR PASSED UPON BY THIS COURT."

This appellant has brought this appeal to the Honorable Supreme Court of the United States by reason of the failure

BLEED THROUGH– POOR COPY

and refusal of the Supreme Court of Kansas to consider or pass upon the constitutional question presented to them. Appellant believes, and in view of the rulings of the Supreme Court of the United States, such a Federal question should not have been ignored, passed, or refused consideration by the Supreme Court of Kansas, thus making necessary this appeal upon said point to this Honorable Supreme Court of the United States. *Pennoyer* v. *Neff*, 95 U. S. 714, 24 L. Ed. 565, 572; *Scott* v. *McNeal*, 154 U. S. 34, 46, 14 S. Ct. 1108, 38 L. Ed. 896, 901; *Coe* v. *Armour Fertilizer Works*, 237 U. S. 413, 423, 35 S. Ct. 625, 59 L. Ed. 1027, 1031; *Postal Tel.-Cable Co.* v. *Newport, supra.*

III

Appellee, in Points IV and V of its motion to dismiss, declares that the Supreme Court of Kansas rested its judgment upon non-federal ground adequate to support it. This appellant contends that said motion of appellee to dismiss should be denied for the very reason stated in its motion, to wit, that a Federal question, and the claim that this appellant was denied due process of law by and through the refusal of the trial court to permit this appellant to be heard therein, was not only presented to the Supreme Court of Kansas, but was entirely ignored and not passed upon by said court. Appellant further urges that while a decision by a State court on a Federal question may not be necessary to a determination of a cause as concerns other factors therein, that the guarantee of "due process of law" is of sufficient importance as to require consideration as to whether such constitutional guarantee was complied with or afforded a litigant and is not to be lightly brushed aside as is indicated in the certificate of the presiding justice of the Supreme Court of Kansas that the question was raised,

but was not "considered or passed upon" by said Honorable Supreme Court of Kansas.

Albrecht v. *U. S.*, 273 U. S. 1, 8, 47 S. Ct. Rep. 250;
Louis K. Liggett Co. v. *Baldridge*, 278 U. S. 105, 49 S. Ct. Rep. 57;
Snyder v. *Massachusetts*, 291 U. S. 97, 122;
Powell v. *Alabama*, 287 U. S. 45, 68;
Galpin v. *Page*, 18 Wall. 350, 368, 369;
Baldwin v. *Hale*, 1 Wall. 223, 233;
Twining v. *New Jersey*, 211 U. S. 78, 110;
Washington ex rel. Oregon R. and Nav. Co. v. *Fairchild*, 224 U. S. 510;
Coe v. *Armour Fertilizer Works*, 237 U. S. 413, 419.

Conclusion

It will appear affirmatively from the record herein that this appellant has complied strictly with the requisites of Section 1 of Rule 12 of this Honorable Supreme Court; that since this appellant was not afforded a trial or an opportunity to be heard in the court of first instance, this appellant raised the Federal question sought to be reviewed by ASSIGNMENT OF ERRORS ON APPEAL.

Since the Federal question sought to be reviewed was not considered or passed upon by the Honorable Supreme Court of the State of Kansas, a constitutional Federal question is involved in this appeal, and the motion of appellee to dismiss should be denied.

Dated this 13th day of June, 1947.

GRACE MCNAMARA,
Petitioner and Appellant in Propria Persona.

BLEED THROUGH- POOR COPY